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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 24.

MAE SILVER

Appellant,

vs.

BENJAMIN SILVER.

BRIEF FOR APPELLANT

THOMAS R. ROBINSON,
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No. 24.

BRIEF OF APPELLANT

Reference to Official Report of Opinion Below.

The opinions delivered in the Supreme Court of Errors are printed in 108 Conn. 371, and also in this record (R. 25 and 31).

Statement of the Case.

The appellant is the wife of the appellee. Upon his invitation she became a passenger in an automobile operated by him on a highway in Connecticut, where there was considerable traffic in both directions. The appellee allowed his attention to be diverted from the operation of the automobile by someone other than the appellant, and as a result collided with another vehicle immediately in front of him causing the injuries to the appellant for which she sued in the Superior Court for New Haven County, Connecticut (R. 1).

The case was tried to a jury, which returned a verdict, by the direction of the Court for the appellee (R. 3). The Court

directed the verdict on two grounds (R. 26); (1) that it had not been shown that the appellee's conduct was the proximate cause of the collision, which is immaterial here, and was held unwarranted by the Supreme Court of Errors on appeal (R. 26) and (2) that the conduct of appellee did not come within the provisions of Chapter 308 Public Acts of Connecticut of 1927, which is as follows:

"An Act Releasing Owners of Motor Vehicles from Responsibility for Injuries to Passengers therein.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

SECTION 1. No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others.

SECTION 2. This act shall not relieve a public carrier or any owner or operator of a motor vehicle while the same is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger being transported by such public carrier or by such owner or operator."

As construed by the trial court (R. 22) and the Supreme Court of Errors on appeal (R. 27 and 28), this statute took from the appellant her cause of action for ordinary negligence against the appellee, and made it necessary for her to show something more than such conduct to enable her to recover.

The validity of the statute so construed, was assailed by the appellant as a violation of the Constitutional guarantees accorded her by the 14th Amendment (R. 28). The statute was sustained against this attack, by a court divided three to two (R. 30). From this decision that Chapter 308 Public Acts of Connecticut 1927, does not violate her rights guaranteed by the 14th Amendment of the Federal Constitution this appeal is taken.

Specification of errors urged.

We urge the errors set out in the statement of points to be relied on (R. 39) or of the Errors assigned (R. 37) Errors 1 to 5 inclusive.

Argument.

Summary:

Appellant, had under the law of Connecticut, along with all other gratuitous guests in conveyances a cause of action against anyone negligently injuring her.

Public Acts of Connecticut, Chapter 308, 1927, deprives her of this cause of action against the owner or operator of a motor vehicle in which she is a gratuitous guest, and particularly the appellee.

The statute works this deprivation to the appellant while leaving a cause of action for negligence to other persons similarly circumstanced.

The classification made by such a statute must have a reasonable and substantial relation to the object of the legislation.

Here there is no such relation. The classification at most rests on a mere difference without other basis.

Enactments under the Police Power must conform to the Constitutional limits placed by the 14th Amendment.

This act has no conceivable relation to the legitimate sphere of the Police Power.

The analogy between the gratuitous passenger in an automobile and a gratuitous bailment is not sound.

In the absence of a reason of paramount public interest it is against public policy to deprive a person of a cause of action for tort committed against him.

Such deprivation, if within the power of government at all, must be universal so far as persons in the same circumstances are concerned.

The statute deprives the appellant of the equal protection of the laws, violates the Constitution of the United States, and should be declared invalid.

POINT 1.

Argument Proper.

The Common Law of Connecticut gave to a guest in any conveyance, who was injured by the negligence of the operator or owner of such conveyance, a cause of action. The duty owed to such guest was the observance of ordinary care.

Dickerson v. *Connecticut Co.*, 98 Conn. 87.

POINT 2.

Chapter 308 P. A. Conn. 1927 as construed by the Court below takes from the appellant this cause of action against the appellee, on the ground that he was the operator of a motor vehicle in which she was a guest, thus cutting her off from all other guests in others modes of conveyance and more than that, from those guests in motor vehicles expressly excepted by the second section of the statute, supra.

POINT 3.

The classification made by such a statute must have a reasonable and adequate relation to the object of the legislation.

Atch. T. & St. Fe Ry. v. *Vosburg*, 238 U. S. 56.
Fountain Park Co. v. *Hensler*, 199 Ind. 95.
C. M. & St. P. R. R. Co. v. *Westby*, 102 C. C. A. 65.
People of State of N. Y. v. *Beakes Dairy Co.*, 222 N. Y. 416.
Quaker City Cab Co. v. *Penn.*, 277 U. S. 389.
Southern R. R. Co. v. *Greene*, 216 U. S. 400.
Gulf, Colorado & Sante Fe Ry. v. *Ellis*, 165 U. S. 150.
Louisville Gas & Electric Co. v. *Coleman*, 277 U. S. 32.
Power Mfg. Co. v. *Saunders*, 274 U. S. 490.
Barbier v. *Connolly*, 113 U. S. 27.
M. K. & T. Railroad Co. v. *May*, 194 U. S. 267.

POINT 4.

There is no such basis for this classification.

The decisions of this court and courts throughout the land where legislation has been condemned as attempting classification without such a basis show situations affording a much more substantial reason for distinction. This classification does not serve any public purpose. It tends in no way to increase the safety of traffic but on the contrary, can have no other effect than to increase it hazards.

The unsuccessful distinctions made between corporations domestic and foreign in *Southern R. R. Co.* v. *Greene,* 216 U. S. 400, and *Power Mfg. Co.* v. *Saunders,* 274 U. S. 490; between a corporation doing no business in a state, and those doing business there in *F. R. Royster Guano Co.* v. *Commonwealth of Va.,* 253 U. S. 412; between corporations and individuals in *Quaker City Cab Co.* v. *Commonwealth of Penn.,* 277 U. S. 389; and *Frost* v. *Corporation Commission,* 278 U. S. 515; between mortgage loans of varying terms in *Louisville Gas & Electric Co.* v. *Coleman,* 277 U. S. 32; between gifts *inter vivos* made at certain time before death, in *Schlesinger et al.* v. *Wisconsin,* 270 U. S. 230; between railroads as defendants and other defendants in *Gulf, Colorado and Santa Fe Ry.* v. *Ellis,* 165 U. S. 150 and *Atchison T. & S. F. Ry.* v. *Vosburg,* 238 U. S. 56; between the relation of former employer and employee and persons not in such relation, in *Truax* v. *Corrigan,* 257 U. S. 312; between telegraph companies and others using similar equipment in *Vigeant* v. *Postal Tel. Cable Co.,* 260 Mass. 335; between motor vehicles of varying weights and usages in *Lossing* v. *Hughes Texas Civil Appeals 1922,* 244 S. W. 556, *Consumer's Co.* v. *Chicago,* 298 Ill. 339; *Franchise Motor Freight Assn.* v. *Seavey,* 196 Cal. 77, and *Kellaher* v. *City of Portland,* 57 Oregon 575, and between miners and manufacturers and other persons in *State* v. *Goodwill,* 33 W. Va. 179, are all of a more substantial nature, than the classification attempted by

this statute. The opinion of the court below (R. 29) contends that the distinction is based on the automobile and has a "fair and substantial relation to the object of the legislation which is the control or regulation of automobile traffic upon our public highways." The control of traffic can have but as its object the promoting of safety as pointed out in *H. W. Hess* v. *Leo Pawloski*, 274 U. S. 352. A statute whose only effect must be the reverse cannot rest on this basis. Were the rule of legislative power that which follows from the reasoning of the opinion a statute relieving the owner or operator from civil and criminal responsibility for even intentional injury or death must be upheld.

In this connection attention is drawn to the wording of the statute. It is not confined in its effect to the mishaps arising out of travel but is obviously broad enough to cover injury arising from an accident of any kind, so long as the tort-feasor is the owner or operator of a motor vehicle in which the injured party is being transported gratuitously.

POINT 5.

Statutes under police power must conform to the Constitution.

There is no exception to the generality of Constitutional limitation. Acts under the police power must accord equal protection of the laws to all.

Ritchie v. *People*, 155 Ill. 98.
Lawton v. *Steele*, 152 U. S. 133.
Freund, Police Power, 755.
Weaver v. *Palmer Bros. Co.*, 270 U. S. 402.
Louis K. Liggett Co. v. *Baldridge*, 278 U. S. 105.
Atchison T. & S. F. Ry. v. *Vosburg*, 238 U. S. 56.

POINT 6.

This statute is not a legitimate exercise of the police power because it does not tend to accomplish any of its proper objects. The regulation of a railroad and railroad traffic is a proper subject of legislative action under the police power, but in *Atchison T. & S. F. Ry.* v. *Vosburg, supra,* a statute making a classification which had no tendency to accomplish the object of such regulation was condemned.

It is not so, therefore, as the opinion of the court seems to assume, that all legislation touching a subject which may from any conceivable angle fall within police regulation, is valid. This court has said in *Lawton* v. *Steele,* 152 U. S. at 137:

> "To justify the State in thus interposing its authority in behalf of the public, it must appear, first, that the interests of the public generally, as distinguished from those of a particular class, require such interference, and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals."

Tested by this standard, this statute is not a proper exercise of the police power.

POINT 7.

The analogy between a gratuitous guest and a gratuitous bailment is not sound.

The contractual relation between bailor and bailee by which one owes certain duties to the other, bears no substantial relation to the general duty which each individual owes his fellow not to negligently injure him. But if this were the basis of the statute, its invalidity needs no demonstration for its discrimination between the appellant and persons similarly circumstanced is at once apparent.

The difference between the contractual relation in reference to chattels, and the duty to use due care towards persons is clearly set forth in Hutchison on Carriers, Vol. 2, p. 1179, Sec. 1022.

> "The carrier of goods becomes the insurer of their safety only when he is paid to become so; but the carrier of passengers is bound to the utmost care and caution whether paid by the passenger or not; and this distinction is based upon wholly different reasons of public policy, being in the one case the value which it puts upon human life and personal safety, and in the other case the necessity of preventing frauds and combinations, to the 'undoing of all persons' who may have dealings of that kind with the carrier. This distinction between the gratuitous bailment of goods to the carrier and the gratuitous carriage of the passenger is, upon this ground well established, and in the latter case the carrier's liability is the same as when he is paid for the carriage."

This is approved in *Galloway* v. *Perkins,* 198 Ala. 660.

POINT 8.

This statute deprives the appellant of a Common Law right of action of a most valuable nature. Cooley says, Constitutional Limitations, 8th Ed., page 812.

> "The doubt might also arise whether the regulation made for any one class of citizens, entirely arbitrary in its character and restricting from right, privileges, or legal capacity in a manner before unknown to the law, can be sustained, notwithstanding its generality. Distinction in these respects must rest upon some reason upon which they can be defended, . . ."

It might well be contended on the authority of this eminent jurist that the act in question was beyond the pale of legitimate legislation even if it applied to all gratuitous guests.

Carozza v. *Federal Finance & C. Co.,* 149 Md. 223.

POINT 9.

The classification made deprives the appellant of the equal protection of the laws and hence invalidates the statute. The enactment itself contains an exception which shows its vice. If the appellant had been a gratuitous passenger in this same car and her husband was demonstrating it for the purpose of sale, she could recover under the exception contained in the second section. So the classification does not apply even to all gratuitous guests in automobiles but separates a part of such guests from guests in other modes of conveyance and from such guests specified in the second section. Little as may be said for the distinction between different kinds of conveyances, there is not even a mere difference between a guest in a car during a demonstration of which he may know nothing, and a guest when no such process is in progress.

A somewhat similar attempt to deprive a person of a cause of action is found in *Pearson* v. *Portland*, 69 Me. 278, where a statute denying recovery to a person injured by reason of a defective highway whose state of residence did not accor the same remedy, was held unconstitutional.

The case nearest to the present situation is *Birmingham and T. Ry. & Utilities Co.* v. *Carpenter*, 194 Ala. 141, in which a statute attempting to impute the contributory negligence of the operator of a motor vehicle to every occupant of it except passengers paying fare in a motor vehicle regularly used for public hire, was held to be discriminatory and to deny the equal protection of the laws.

There is no fair distinction between this statute and that under attack here.

For all of the foregoing reasons it is respectfully urged that Chapter 308 Public Acts of Connecticut 1927, deprives the appellant of the equal protection of the laws and should be declared invalid.

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